

APPEAL NO. 020565  
FILED APRIL 26, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 19, 2002. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 13th quarter. The claimant appeals the determination on sufficiency grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

Sections 408.142 and 408.143 provide that an employee continues to be entitled to SIBs after the first compensable quarter if the employee (1) has not returned to work or has earned less than 80 percent of his average weekly wage as a direct result of the impairment, and (2) has in good faith sought employment commensurate with his ability to work. The hearing officer determined that the claimant did not satisfy either of these requirements. In view of the evidence presented, we cannot conclude that the hearing officer's "direct result" determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). With regard to the good faith requirement, however, we believe the hearing officer misapplied the law in determining that the claimant did not attempt in good faith to obtain employment commensurate with his ability to work.

In the "Statement of the Evidence" portion of the decision, the hearing officer states, "Although the Claimant did get one job for approximately one month during the qualifying period, he did not provide persuasive information that he had no ability to work the rest of the time or that he had sought work commensurate with his ability to work." We have said that a claimant, who has returned to work in a position which is relatively equal to his ability to work, does not also have to show that he looked for work every week of the qualifying period in order to satisfy the good faith requirement. Texas Workers' Compensation Commission Appeal No. 000321, decided March 29, 2000. More to the point, a claimant is not required to work in his position during each week of the qualifying period or otherwise document a job search in those weeks the claimant did not work, in order to satisfy the good faith requirement. Texas Workers' Compensation Commission Appeal No. 001579, decided August 17, 2000; Texas Workers' Compensation Commission Appeal No. 010472, decided April 17, 2001. In view of the undisputed evidence that the claimant returned to work during the qualifying period for the 13th quarter, we would normally remand the case to the hearing officer for further consideration of the good faith criterion consistent with the provisions of Rule 130.102(d)(1), *viz.*, whether the claimant returned to work in a position relatively equal to his ability to work. However, a remand in this case would serve no useful purpose, since the claimant failed to satisfy the "direct result" criterion and is, therefore, not entitled to 13th quarter SIBs.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TRANSCONTINENTAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 N. ST. PAUL  
DALLAS, TEXAS 75201.**

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Edward Vilano  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge